THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

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WRIT EPTITION NO.26531 OF 1997

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ORDER:

The petitioner in the instant writ petition seeks a writ of mandamus declaring the action on the part of the respondents 1 and 2 by issuing a Memo No.DS(L)/DM/PO.III-A1/OP 4&5/89/C.No.507/97 dated 12.06.1997 and Memo No.ADM.A1/D.No.5477/97 dated 29.09.1997 for recovery of the compensation amount awarded by the Motor Accidents Claims Tribunal, Chittoor from the salary of the petitioner as arbitrary, illegal and violative of the principles of natural justice.

The facts lie in a narrow compass. The petitioner was appointed as a lorry cleaner in C.C.O. Sub-Division , Chittoor, in respect of lorry No.APD-5601. He was instructed to drive the lorry by the Assistant Divisional Engineer on 19.07.1988 as there was no Driver. Unfortunately, the lorry met with an accident on that day. A show cause notice dated 02.12.1993 was issued to the petitioner calling him upon to explain as to why the disciplinary action shall not be taken against him. Pursuant thereto, the petitioner submitted his explanation. Thereafter, no further steps were taken in the said proceedings.

Further the petitioner was subsequently appointed as Driver of the Lorry since he possessed the heavy vehicle driving licence by giving promotion. While so, he was issued a Memo dated 29.09.1997 purporting to recover an amount of Rs.60,492/- from his salary on the premise that the said amount representing the compensation amount awarded to the injured persons in O.P.No.4/89 in respect of motor accident pertaining to the lorry bearing No.APD-5601. No notice or opportunity was given to the petitioner for recovery of the said amount and before issuing the said proceedings. It is the case of the petitioner

that disciplinary action in relation to misconduct is altogether different from recovery of the amount particularly towards compensation amount paid in respect of a motor accident pursuant to the orders of the Motor Accidents Claims Tribunal. Hence, the writ petition.

The respondents resisted the writ petition by filing a counter. *Inter alia* in the counter, it is stated that as per the instructions communicated in Board's Memo No.DS(L)/DM/PO.III-A1/OP/485/89/C.No.507/97 dated 12.06.1997 the compensation amount of Rs.60.492/- awarded in the case was to be made good by recovery from the petitioner, the then Cleaner of the lorry at the time when the accident occurred and as per the above instructions Memo No.Adm/A1/5477/97 dated 29.09.1997 was issued for effecting the recovery of decretal amount from the salary of the petitioner. The petitioner received the said Memo under an acknowledgement receipt dated 08.10.1997. Further, the petitioner submitted a representation dated 09.10.1997 to the Divisional Engineer with a request to stop the recovery for one month and in the meantime, he filed the present writ petition. Therefore, the writ petition is liable to be dismissed.

It is obvious from the matrix of the case that an accident took place by the use of the motor vehicle on road and the petitioner was the driver of the vehicle at the relevant time. The inmates who were the unauthorised passengers sustained injuries and then they filed a claim petition before the Motor Accidents Claims Tribunal. Compensation was awarded to them by the Tribunal against the respondents as well as the Insurance Company. However, the Tribunal directed that half of the compensation amount thus awarded to be paid by the Insurance Company so as to indemnify the employer, namely, the Board/respondents herein and the remaining half of the amount to be paid by the Board. Admittedly, no disciplinary proceedings were taken up against the petitioner except calling for his explanation, particularly when he offered his explanation. No punishment was awarded to the petitioner for his act of negligence which resulted in the accident. Of

course, the petitioner is denying the fact that he was driver of the lorry when it met with an accident. Under these circumstances, issuing the memo for recovery of the compensation by the Board from the salary of the petitioner is being questioned.

The respondents have not stated anything in the counter *inter alia* about the service Rules or Regulations which enable the Board to recover the compensation amount paid, particularly keeping in view the principle of vicarious liability, to the injured in the motor accident that occurred on account of the negligence on the part of the driver of the vehicle belonging to the Board. Admittedly, the Board is the employer and the writ petitioner is its employee.

As per the Law of Torts, the driver of a motor vehicle which involved in an accident on account of his negligence is liable to pay compensation to the injured or the victim of the accident for his tortious act. The law fastens the tortious liability on the driver of the vehicle. When such an accident is committed by the driver on account of his tortious act during the course of his employment, the employer is vicariously liable. This is the general liability. This is again a joint and several liability. Insofar as the insurer of the vehicle with which the vehicle is insured is concerned, under the contract it is liable to indemnify the owner. It is open to the employer who has paid for the negligence of his servant can sue that servant for indemnity if it is just and equitable. It is also open to the employer to proceed against the employee initiating disciplinary action as per the Rules framed if any governing the service conditions of the employee. However, in the instant case, no disciplinary action has been initiated against the petitioner. On the other hand, he has been appointed as driver by the Board. The learned counsel for the petitioner represents that the petitioner has been acquitted in the criminal case launched against him in this connection.

It is well within the purview of the Board to initiate disciplinary proceedings against the petitioner and pass appropriate orders if it is

covered by any Rule or Regulation for recovery of the amount thus awarded towards compensation to the injured in the motor accident. No such Rule or Regulation has been placed before me by the Board which enables it to recover such amount from the petitioner. No action has been initiated for indemnity on the principle of just and equity by the Board against the petitioner. The action on the part of the Board in having issued the impugned memo thus appears to be against all the canons of law and the principles of natural justice; more so, when the Board has not initiated any disciplinary proceedings by conducting any enquiry and it has not resulted in awarding any punishment to the employee including the one of recovery of the compensation amount paid if authorized by means of any Rule or Regulation framed by the Board. As discussed hereinabove, no such Rule or Regulation has been placed before me. Even the instructions as mentioned *inter alia* in the counter of the Board have not been placed before this Court notwithstanding the fact that such instructions can legitimately be issued or not. It is fairly a case where the action of the respondents is quite arbitrary and is liable to be struck down.

For the above reasons, the Writ Petition is accordingly allowed and the impugned proceedings issued for recovery of an amount of Rs.60,492/- against the writ petitioner are hereby set aside. If recovery of any amount is effected from the salary of the petitioner so far based on the impugned proceedings, that amount is liable to be refunded to him forthwith. Under the circumstances, no separate order as costs.

12---7---2006

VGSR

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

WRIT EPTITION NO.26531 OF 1997

DATED 12.07.2006

P.Arumugam, S/o P.Boyedu,
Aged about 49 years,
R/o Chittoor, Chittoor District. ...
Petitioner

And

A.P.S.E.B. rep. by its Member Secretary,
Vidyut Soudha, Hyderabad. And Others ...
Respondents